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SB 560 S. D. 1

House Committee on Ocean Recreation and Marine Resources

Public Hearing - March 16, 1999

9:00 a.m., Room 312, State Capitol

By

John Harrison, Environmental Center

David Duffy, Botany, PCSU

Charles Lamoureux, Lyon Arboretum

HB 560 would amend Section 205A-22, HRS, to define "substantial adverse environmental or ecological effect" as it relates to special management areas.

Our comments on this measure are compiled from voluntarily submitted opinions of the listed academic sources, and as such, do not constitute an institutional position of the University of Hawaii.

It appears that, pursuant to objections raised as to enforceability of standards of degradation proposed in the original version of this measure, the definition of "substantial adverse environmental or ecological effect" has been watered down to something vague enough to permit all but the most egregious environmental damage. We find it ironic that a quantitative measure of impact is perceived unenforceable, while an unspecific, subjective "risk assessment" may provide a legal basis for action.

In the original language, damage to or degradation of a unique resource was specified as a criterion of substantial effect. From a standpoint of enforceability, either the resource is degraded or it isn't. By definition, such resources are exceptional, and if a question is raised as to the uniqueness of a particular resource, the precautionary principle dictates that the burden of proof as to the commonality of the resource should be borne by the agency that proposes to degrade it.

Certainly, the challenge of quantifying a particular resource within an ahupua'a is proportional to the ease of survey, and deletion of this requirement from HB 560 is reasonable for very large areas. However, the remaining criteria proposed in the original language addressed very narrowly defined regions and specific, measurable parameters. As we noted in our prior testimony, the major shortcoming

of the original language was the omission of a time frame within which these impacts would occur. The amended definition still omits the critical element of time.

Presumably the intent of the measure is to halt long term, or cumulative degradation. Inclusion of a reference interval linking sequential or cumulative actions to the baseline is needed in order to make this definition effective. Otherwise, the all too common scenario of multiple, minor losses which, combined, add up to far more than a 5% loss of public trust or other natural resources would continue unabated. Perhaps if the phrase, "per century" were added after every reference to 5%, the measure would more effectively address the problem.

If nothing else, preserving the requirement to establish quantitative before and after measurements relative to benchmarks of specific water quality or species abundance and distribution parameters would begin to shed light on what we are destroying, and how fast we are doing it. Thus, a beneficial effect of this measure as it was originally conceived would be to provide for project-specific baseline surveys as part of the planning and long term management process.